

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

RUGGERS, INC., d/b/a)
KOOGA NORTH AMERICA,)
Plaintiff)
)
v.) C.A. No. 09-cv-30051-MAP
)
UNITED STATES OF AMERICA)
RUGBY FOOTBALL UNION, LTD.)
d/b/a USA RUGBY, ET AL.,)
Defendants)

MEMORANDUM AND ORDER REGARDING
REPORT AND RECOMMENDATION WITH REGARD TO
PLAINTIFF'S DAMAGES AGAINST DEFENDANT XP APPAREL, LLC,
AND DEFENDANT USA RUGBY'S
MOTION FOR DEFAULT JUDGMENT ON CROSS-CLAIM
ASSERTED BY XP APPAREL, LLC
(Dkt. Nos. 78 & 80)

April 21, 2011

PONSOR, D.J.

Plaintiff has charged Defendants XP Apparel, LLC ("XP") and America Rugby Football Union, LTD d/b/a USA Rugby ("USA Rugby") with trademark infringement under the Lanham Act, 15 U.S.C. § 114(a). As part of the litigation, Defendant XP asserted a cross-claim against Co-Defendant USA Rugby.

In November of 2010, this court allowed the attorneys for XP to withdraw from the case. At that time, XP requested additional time to provide automatic disclosures, which they had up to that point failed to provide. The court gave Plaintiff the opportunity to move for default and indicated that XP could retain new counsel and oppose the

motion for default. Ultimately, Plaintiff did request a default on liability and this request was allowed based on the absence of any opposition from XP. Thereafter, the portion of the litigation between Plaintiff and XP was referred to Magistrate Judge Kenneth P. Neiman for a damages hearing.

On February 17, 2011, Judge Neiman issued his Report and Recommendation, to the effect that Plaintiff should be awarded \$23 million in damages against Defendant XP, along with attorney's fees in the amount of \$24,600.00. XP offered no objection to this Report and Recommendation. Plaintiff offered only a limited objection (Dkt. No. 79), to insure that if the damage recommendation were adopted "the findings will have no bearing or effect whatsoever as to any of the claims asserted by Ruggers against USA Rugby in its second amended complaint or by USA Rubgy against Ruggers in its counterclaim, which matters remain for later adjudication." Id. at 2.

On March 4, 2011, Defendant USA Rugby filed a Motion for Default Judgment on the cross-claim asserted by XP (Dkt. No. 80). No opposition has been filed to this motion. It is obvious that XP lacks either the means or inclination to participate in this litigation, or both.

Based upon the foregoing,, upon de novo review, the

court hereby ADOPTS the Report and Recommendation of Judge Neiman dated February 17, 2011 (Dkt. No. 78). The damages to be awarded against Defendant XP will be in the amount of \$23 million with attorney's fees in the amount of \$24,600.00. Plaintiff may be assured that this finding will have no bearing on the continuing litigation between Plaintiff and USA Rugby and the counterclaim back by USA Rugby against Plaintiff. These claims remain for further adjudication.

Based on the lack of opposition, the court hereby ALLOWS USA Rugby's Motion for Default Judgment on the cross-claim of XP (Dkt. No. 80).

The court will decline to issue separate judgment pursuant to Fed. R. Civ. P. 54(d). Thus, the adoption of Judge Neiman's Report and Recommendation, and the allowance of USA Rugby's motion against XP's cross-claim will create no appealable judgment. Final judgment will not enter pending completion of all the litigation in this case.

It is So Ordered.

/s/ Michael A. Ponsor
MICHAEL A. PONSOR
U. S. District Judge